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PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			TAYLOR, BARRY W	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/014,683

Applicant(s)

RITTER, RUDOLPH

Examiner

Barry W Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1-7, 11-15, 18-22, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausems et al (6,434,403 hereinafter Ausems) in view of Emmoft et al (6,424,845 hereinafter Emmoft).

Regarding claim 1. Ausems teaches portable radio receiver (title, abstract and figure 2), which programs of a central radio sender can be received, comprising:

an identification module (260 figure 2) in which user-specific data are stored,
a contact less interface (265 figure 2) over which a radio connection can be established with external devices at close range in order to send said user-specific data to these external devices (col. 6 lines 19-59).

According to Applicant's, Ausems fails to teach receiving programs of a central radio sender (see Applicant's newly amended claim language and Applicant's remark appearing in the first three lines of page 8, paper dated 1/21/05).

Emmofte teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for

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example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use remote programmable smart cards as taught by Emmoft for the benefit of providing users with remotely downloaded music or football scores.

Regarding claim 2. Ausems teaches identification module is in the form of removable chip-card (col. 6 lines 32-34).

Regarding claim 3. Ausems teaches identification module is in the form of a storage area (col. 6 lines 57-59).

Regarding claims 4-7. Ausems fails to show remote programming of SIM card. However, Ausems discloses transmitting and receiving video data (col. 1 lines 25-42), audio data (col. 5 line 57), camera functions (col. 6 line 17), internet access (col. 6 line 1) as well as using GPS features (col. 3 lines 5-21, col. 5 lines 36-54).

Emmoft teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use remote

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programmable smart cards as taught by Emmoft for the benefit of providing users with remotely downloaded music or football scores.

Regarding claim 11. Ausems teaches user specific data comprises identification data of the user (col. 6 lines 32-59).

Regarding claims 12-14. Ausems teaches user specific data comprises biometric sensors such as fingerprint ID (col. 8 lines 63-67). Ausems further discloses the portable radio having camera (col. 6 line 17).

Regarding claim 15. Ausems teaches user specific data comprises authorization data of the user for using said external device (col. 1 lines 59-67, col. 6 lines 19-47).

Regarding claim 18. Ausems teaches radio receiver comprises location-determining means (see GPS item 195 figures 1n, 1o, 1p and figure 2).

Regarding claim 19. Ausems teaches the location determining means can determine the location from satellite signals (see GPS item 195 figures 1n, 1o, 1p and figure 2).

Regarding claim 20. Ausems teaches location-determining means comprises GPS (see GPS item 195 figures 1n, 1o, 1p and figure 2).

Regarding claims 21-22. Ausems fails to use data filter. However, Ausems discloses transmitting and receiving video data (col. 1 lines 25-42), audio data (col. 5 line 57), camera functions (col. 6 line 17), internet access (col. 6 line 1) as well as using GPS features (col. 3 lines 5-21, col. 5 lines 36-54).

Emmofit teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for

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example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49). Emmoft uses identity code or call sign for a multiplicity of portable communication devices wherein the call signs are transmitted continually by retail store to be received over an area in proximity to the store (col. 4 lines 20-55).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use call signs as taught by Emmoft for the benefit of providing users within proximity to retail store with purchases available at a discount price.

Regarding claim 32. Ausems teaches portable digital audio broadcasting receiver (title, abstract and figure 2), comprising:
a storage area in which user-specific data are stored (260 figure 2),
a contact less interface (265 figure 2) over which a radio connection can be established with external devices at close range in order to send said user-specific data to these external devices (col. 6 lines 19-59).

Ausems fails to teach storing DAB data.

Emmofte teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49). Emmoft uses identity code or call sign for a multiplicity of portable

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communication devices wherein the call signs are transmitted continually by retail store to be received over an area in proximity to the store (col. 4 lines 20-55).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use call signs as taught by Emmoft for the benefit of providing users within downloaded music for user listening.

Regarding claim 34. Ausems fails to use data filter. However, Ausems discloses transmitting and receiving video data (col. 1 lines 25-42), audio data (col. 5 line 57), camera functions (col. 6 line 17), internet access (col. 6 line 1) as well as using GPS features (col. 3 lines 5-21, col. 5 lines 36-54).

Emmofit teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49). Emmofit uses identity code or call sign for a multiplicity of portable communication devices wherein the call signs are transmitted continually by retail store to be received over an area in proximity to the store (col. 4 lines 20-55).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use call signs as taught by Emmofit for the benefit of providing users within proximity to retail store with purchases available at a discount price.

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2. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausems et al (6,434,403 hereinafter Ausems) in view of Emmoft et al (6,424,845 hereinafter Emmoft) further in view of Applicants admitted prior art (see Applicant's specification page 1 and page 9 last paragraph description of standardized interfaces, for example, Bluetooth, HomeRF or RFID interface).

Regarding claims 8-10. Ausems does not limit the contact less interface to particular protocol. Instead Ausems uses short-range transceiver (e.g. Bluetooth) coupled to smart-card.

Applicants openly admit that prior art already discloses using short-range RFID in conjunction with smart card (see Applicant's specification page 1 last paragraph). Furthermore, Applicant's disclose that standardized interfaces may also be used (see HomeRF or RFID in applicant's specification page 9 line 30).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to use short range transceiver such as Bluetooth as taught by Ausems in view of Emmoft or standardized interface such as HomeRF or RFID as openly disclosed by Applicant's specification page 1 for wireless link in order to communicate with other devices.

3. Claims 16-17, 30-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausems et al (6,434,403 hereinafter Ausems) in view of Emmoft et al (6,424,845 hereinafter Emmoft) and Applicants admitted prior art (see Applicant's specification page 1) further in view of Wood, Jr. (6,118,789 hereinafter Wood).

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Regarding claims 16-17 and 33. Ausems in view of Emmoft do not explicitly show using SIM card to pay for transportation fair. However, Ausems discloses using smart card for credit, cash, prepaid phone and/or medical smart-card applications (col. 4 lines 40-50). Ausems even discloses GPS used with smart card applications (col. 5 lines 36-47).

Applicants openly admit that prior art already discloses using smart card to pay for transportation fair (see Applicant's specification page 1 lines 9-19).

Wood teaches an electronic identification system wherein when a radio frequency identification device passes an interrogator at toll booth, the toll booth determines the identity of the identification device (col. 1 lines 50-58, col. 2 lines 55-57). Wood also uses short range RFID system (col. 5 lines 11-57) that employs filtering techniques to detect and communicate with specific device.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the smart card as taught by Ausems in view of Emmoft to use smart card as disclosed by applicant's or the short range RFID system as taught by Wood for the benefit using smart card to pay for toll at toll booth.

Regarding claim 30. Ausems in view of Emmoft do not explicitly show the radio receiver in the form of chip-card. However, Ausems discloses using smart card for credit, cash, prepaid phone and/or medical smart-card applications (col. 4 lines 40-50). Ausems even discloses GPS used with smart card applications (col. 5 lines 36-47).

Applicants openly admit that prior art already discloses chip-card or wristwatch having RFID technology (see Applicant's specification page 1 lines 9-19).

Wood teaches an electronic identification system wherein when a radio frequency identification device passes an interrogator at toll booth, the toll booth determines the identity of the identification device (col. 1 lines 50-58, col. 2 lines 55-57). Wood also uses short range RFID system (col. 5 lines 11-57) that employs filtering techniques to detect and communicate with specific device.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the smart card as taught by Ausems in view of Emmoft to use smart card as disclosed by applicant's or the short range RFID system as taught by Wood for the benefit using smart card to pay for toll at toll booth.

Regarding claim 31. Ausems in view of Emmoft does not explicitly show the radio receiver in the form of wristwatch. However, Ausems discloses using smart card for credit, cash, prepaid phone and/or medical smart-card applications (col. 4 lines 40-50). Ausems even discloses GPS used with smart card applications (col. 5 lines 36-47).

Applicants openly admit that prior art already discloses chip-card or wristwatch having RFID technology (see Applicant's specification page 1 lines 9-19).

Wood teaches an electronic identification system wherein when a radio frequency identification device passes an interrogator at toll booth, the toll booth determines the identity of the identification device (col. 1 lines 50-58, col. 2 lines 55-57). Wood also uses short range RFID system (col. 5 lines 11-57) that employs filtering techniques to detect and communicate with specific device.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the smart card as taught by Ausems in view of Emmoft to

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use smart card as disclosed by applicant's or the short range RFID system as taught by Wood for the benefit using smart card to pay for toll at toll booth.

4. Claims 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausems et al (6,434,403 hereinafter Ausems) in view of Emmoft et al (6,424,845 hereinafter Emmoft) further in view of Musgrave et al (6,483,930 hereinafter Musgrave).

Regarding claim 23. Ausems in view of Emmoft do not explicitly show data filter can be set by user.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44).

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) in view of Emmoft to use iris image as taught by Musgrave for the benefit of authenticating users by using iris images and blocking access to unidentified users.

Regarding claim 24. Ausems teaches mobile communication part (see item 210 figure 2).

Regarding claim 25. Ausems in view of Emmoft fail to show GSM.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of

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images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44). Furthermore, Musgrave discloses GSM protocol used (col. 14 line 46) enabling call setup to be used in conjunction with iris image.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) in view of Emmoft to use GSM protocol as taught by Musgrave for the benefit of using iris image during call set-up thereby authenticating users during call set-up.

Regarding claim 26. Ausems in view of Emmoft fail to show UMTS.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44). Furthermore, Musgrave discloses GSM or any other call set-up protocol used (col. 14 lines 45-47) enabling call setup to be used in conjunction with iris image.

Therefore, it would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) in view of Emmoft to use GSM protocol as taught by Musgrave for the benefit of using iris image during call set-up thereby authenticating users during call set-up.

Regarding claim 27. Ausems in view of Emmoft fail to show blocking data.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44). Furthermore, Musgrave discloses GSM or any other call set-up protocol used (col. 14 lines 45-47) enabling call setup to be used in conjunction with iris image.

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) to use iris image as taught by Musgrave for the benefit of authenticating users by using iris images and blocking access to unidentified users.

Regarding claim 28. Ausems in view of Emmoft fail to visual reproduction.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44). Furthermore, Musgrave discloses GSM or any other call set-up protocol used (col. 14 lines 45-47) enabling call setup to be used in conjunction with iris image.

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) to use iris image as

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taught by Musgrave for the benefit of authenticating users by using iris images and blocking access to unidentified users.

Regarding claim 29. Ausems in view of Emmoft fail to show using Visual Retina Display.

Musgrave teaches an IRIS imaging telephone security module and method (title, abstract) that uses camera to capture iris image and compare to stored templates of images to identify users allowed to use telecommunication device (abstract, col. 2 lines 36-53, col. 6 lines 24-65, col. 7 lines 12-22) or bill different users by using iris scan of different users (col. 14 lines 39-44). Furthermore, Musgrave discloses GSM or any other call set-up protocol used (col. 14 lines 45-47) enabling call setup to be used in conjunction with iris image.

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the camera as taught by Ausems (col. 6 line 17) to use iris image as taught by Musgrave for the benefit of authenticating users by using iris images and blocking access to unidentified users.

Response to Arguments

5. Applicant's arguments filed 1/21/05 have been fully considered but they are not persuasive.

a) Regarding Applicants remark on page 8, lines 1-3, paper dated 1/21/05 wherein Applicants contend that None of references suggest a portable radio module for receiving programs of a central radio sender.

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The Examiner disagrees. See Ausems sending and receiving video data (column 1), see short-range wireless transceiver operations column 3, see GPS and image features column 5, see column 9 wherein Bluetooth transceiver 265 used for short range communications. Emmoft teaches portable communication device having smart card that can be remote programmed (col. 4 lines 20-55) providing remotely downloaded information, for example, sporting results, financial share information, music or any other material that can be conveniently transmitted and received for storage on a smart card (col. 5 lines 38-49).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the portable device as taught by Ausems to use remote programmable smart cards as taught by Emmoft for the benefit of providing users with remotely downloaded music or football scores.

b) Applicants jump to Emmoft and contend that Emmoft does not teach using "user-specific data" (third paragraph page 8).

IF this were true than Emmoft would have to offer free downloading of program-accompanying data (i.e. sports results, financial share information, music or any other material to the smart card). Ausems indeed teaches sending user specific information to nearby devices (see Examiner rejection listed above).

c) Next, Applicants skip claims 2-31 and jump to claim 32 and argue that Ausems does not teach DAB (page 8, last paragraph).

First of all, Ausems is very capable of receiving video data (column 1 lines 25-42), audio data (column 5 line 57) and Internet (column 6 line 1) which would require

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little effort for any one of ordinary skill in the art at the time of invention to modify Ausems device to use remote programmable smart card as disclosed by Emmoft allowing users to enjoy downloaded music or football scores.

d) Applicants argue none of references teach sending authorization data in broadcast mode (see page 9).

IF this were true than Emmoft would have to offer free downloading of program-accompanying data (i.e. sports results, financial share information, music or any other material to the smart card). Furthermore, the Examiner notes that it would be hard to carry out financial transaction to nearby devices if some sort of "authorization" is not performed. Ausems indeed teaches sending user specific information to nearby devices (see Examiner rejection listed above).

e) Next, Applicants argue motivation for combining the references.

Combining Ausems and Emmoft would allow user to listen to music or football scores and provide money to service provider offering the downloaded music or football scores.

f) Applicants continue to skip dependent claims (see page 10 wherein claims 8-10 are skipped over).

g) Next, Applicants argue their own admitted prior art (see bottom of page 10).

The Examiner notes that Ausems uses short-range transceiver (e.g. Bluetooth) well before Applicants admit prior art already using standard interfaces. Furthermore, Bluetooth would read on short-range as generally recited in dependent claims 8-10.

Conclusion

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6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (571) 272-7509, who is available Monday-Friday, 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached at (571) 272-7499. The facsimile phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (571) 272-2600, the 2600 Customer Service telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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